

This letter rules on questions regarding application of the Gas Revenue Tax to transactions in interstate commerce and transactions involving customers who acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-state supplier or source on or before March 1, 1995. See 35 ILCS 615/1 et seq. (This is a PLR).

March 10, 1999

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of January 15, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to BUSINESS for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither BUSINESS nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This is a request for a private letter ruling under the provisions of 2 Illinois Administrative Code Section 1200.110 on behalf of BUSINESS.

FACTS:

1. BUSINESS, is a regulated public utility located in CITY/STATE. The company generates, transmits, and distributes electricity in STATE1 and STATE2. In addition, BUSINESS has a division, The COMPANY, which markets electricity and gas throughout the United States. BUSINESS is registered to pay the Illinois Gas Revenue Tax under Illinois Business Tax Number #####.
2. BUSINESS is not presently under audit by the Illinois Department of Revenue, there is no pending litigation on this issue with the Department.
3. This request is intended to provide guidance to BUSINESS, and its customers regarding the collection and payment of taxes.
4. BUSINESS has not previously requested or withdrawn a request for a private letter ruling from the Department on this issue.

TAXPAYERS POSITION

1. BUSINESS's division, COMPANY, sells natural gas to end users in Illinois. COMPANY takes title to gas outside of Illinois and sells gas to end users at the 'city gate' in Illinois. Contracts for sales of gas are signed by end user in Illinois. BUSINESS believes these transactions are not subject to tax based upon the Mississippi River Fuel Corp. v. Hoffman (1995) 4 Ill.2d 459, cert. denied. The Illinois Supreme Court held that interstate gas transactions are not subject to the gas revenue tax.
2. COMPANY sells gas to an end user in Illinois. The end user presents an exemption certificate pursuant to Public Act 89-417, stating that on or before March 1, 1995, the customer had either acquired the contractual right to purchase gas from an out-of-state supplier or had maintained an account with an Illinois public utility for transportation of gas owned by the customer. Taxpayer believes that such transactions are not subject to the gas revenue tax based upon Illinois Regulation, 86 Illinois Administration Code Section 470.171 and Public Act 89-417.

RULING REQUESTED:

BUSINESS requests that the Illinois Department of Revenue issues a Private Letter Ruling to the effect that the tax treatments as stated in the Taxpayers Position are correct.

If you anticipate issuing a Private Letter Ruling that is adverse to the Taxpayers Position, as stated above, I would appreciate the opportunity to discuss these issues with you at your convenience. I request that the names of the parties involved in this letter be deleted from any public publication.

Please call me at #### if you have any questions.

In regards to Taxpayer's Position Number 1, after reviewing the facts presented and the relevant law, we agree that BUSINESS is not subject to the tax imposed by Section 2 of the Gas Revenue Act ("Act"), 35 ILCS 615/2, with respect to its sales of natural gas delivered to customers in Illinois. BUSINESS accepts purchase orders in Illinois and takes title to the gas outside Illinois. This is because the relevant statutory language in Section 2 of the Act, regarding the interstate commerce exemption from tax, has been construed by the Illinois Supreme Court in Mississippi River Fuel Corp. v. Hoffman, 4 Ill.2d 468 (1955) to include transactions such as those entered into by BUSINESS. The Illinois Attorney General, in Opinion of the Attorney General No. 95-001, has determined that this construction of Section 2, under the law as it was in 1945 when the Act was adopted, must stand until the language of Section 2 is amended. The relevant language has not been amended. Therefore, while a construction of Section 2 under today's principles of constitutional law might consider acceptance of the purchase orders in Illinois to be a factor disqualifying BUSINESS's transactions from the interstate commerce exemption from tax, we must accept the construction of the statute by the Illinois Supreme Court.

In regards to Taxpayer's Position Number 2, pursuant to Section 1(x) of the Act, BUSINESS is not subject to the tax imposed by Section 2 of the Act with respect to sales of gas to a customer which, prior to March 2, 1995, maintained an account with an Illinois public utility for the transportation of gas which the customer had purchased from an out-of-state supplier or source.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules, or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Bill Lundeen
Chief Counsel

BL:MAJ:msk
Enc.